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COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER HUYNH, LOUIS K	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.
2. Applicant is respectfully requested to provide proper headings to the specification in accordance with current U.S. practice.
3. Applicant is also respectfully requested to amend the specification at page 2, lines 17-19, to remove any references to specific claim number.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 requires that “the flawless tubes (23) being received by the discharge belt (24) by means of rotatable suction prisms (32)” which is not disclosed in the present application. The specification at page 7, lines 12-27, teaches that the rotatable prisms (32) are for removing the tubes from the discharge conveyor (24), but are not used in depositing the tubes onto the discharge belt (24). Note that the finished tubes are deposited onto the discharge belt (24) by the rotatable holding device 32’ in region 33 according to the specification (page 6, line 27 – page 7, line 4); however, nowhere in the specification discloses that the rotatable holding device 32’ comprises rotatable suction prisms 32.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are generally narrative and indefinite, failing to conform with current

U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

- Claim 1, lines 10-12: “in each case welded in parallel planes to form endless tubes” is indefinite because it is unclear as to what device or means for forming the strip into tube shaped and what device or means for welding.
- Claim 1, lines 12-13: “the tubular bodies” lacks proper antecedent basis.
- Claim 1, lines 12-15: “the tubular bodies ... transferred to a turn table” is indefinite because it is unclear as to what device or means for assembling the tubular bodies into a larger group, and what device or means for transferring the assembled group to the turn table.
- Claim 1, line 17-18: “stations for fitting the shoulder portion with a threaded neck and the closure cap” is indefinite because it is unclear as to what device or means for fitting the shoulder with the a threaded neck and a closure cap. Note that a station is a work area, it is not an apparatus that can perform a specific manufacturing task.
- Claim 1, line 19: “the finished tubes” lacks proper antecedent basis.
- Claim 1, lines 19-20: “the finished tubes are deposited on a discharge belt” is indefinite because it is unclear as to what device or means for depositing the finished tubes on the discharge belt.
- Claim 1, lines 20-21: “the partitions of which” lacks proper antecedent basis.
- Claim 1, line 24: “for examining the tubes” is indefinite because it is unclear as to what device or means for examining the tubes.

- Claim 1, line 25: “the flawless tubes” lacks proper antecedent basis.
- Claim 1, line 27: “the spacing” lacks proper antecedent basis.
- Claim 1, lines 27-28: “being fed continuously to a tray” is indefinite because it is unclear as to what device or means for feeding to the tray.
- Claim 2 is indefinite because it is unclear as to what device or means for deflecting the laminated foil by 90°.
- Claim 3 is indefinite because it is unclear as to what device or means for welding the individual webs one above the other to form endless tubes.
- Claim 4 is indefinite because it is unclear as to what device or means for welding the individual webs next to one other to form endless tubes.
- Claim 5, line 2: “the unsuable tubes” lacks proper antecedent basis;
- Claim 5 is indefinite because the discharge belt does not discharge unsuable tubes, thus it is unclear as to what device or means for discharging unsuable tubes from the discharge belt. Furthermore, it is unclear as to what device or means for determining that a tube is an unsuable tube.
- Claim 6 is indefinite because it is unclear as to what device or means for phase-shifting the toothed belts.
- Claim 8 is indefinite because it is unclear as to the structural relationship of the collecting device with respect to the structures of the claimed plant.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmid et al. (US 4,123,312) in view of Conner (US 3,540,959) and Holoubek et al. (US 3,896,710).

- Schmid discloses an apparatus for producing tubular containers comprising: a shaping tube (5) for shaping a foil strip (3) into a cylindrical shape; a welding unit (9) for welding overlapping foil edges to form an endless tube; a cutting device (18) for transversely cutting the endless tube into tubular bodies (23), a transfer device (28) for passing the tubular bodies (23) to a heading machine (30), the heading machine comprising a turn table (31) with rotary spindles (32) arranged evenly on the turn table (31) for fitting a cap head (33) comprising a shoulder (34) and a threaded neck onto each tubular body (23) and for fitting a cap (36) over the threaded neck of the cap head fitted to the tubular body (23) to form a finished tubular container; and a discharge conveyor for discharging the finished tubular containers to a further processing (filling) station. The apparatus of Schmid meets most of applicant's claimed subject matter except for the foil strip being an individual foil strip cut from a dual or multiple-strip by one or a plurality of partitioning knives. Connor teaches that web material (W) is normally partitioned by partition knives (18) into individual webs (w_1 , w_2 , w_3) of desired width prior to

forming into tubular configuration in the process of manufacturing tubular containers; therefore, it would have been obvious to a skilled person in the art, at the time of the invention, to have partitioned a standard width web material by partition knives into individual webs of desired width, as taught by Connor, in order to form the individual web into tubular configuration of desired diameter. The modified apparatus of Schmid meets all of applicant's claimed subject matter but lacks the specific teaching of the discharge conveyor having transport prisms, rotatable suction prisms and a tray for receiving the finished tubes. Holoubek discloses an apparatus for manufacturing tubular container comprising a discharge conveyor (58) having grooves for receiving the finished tubes and conveying the finished tubes to a filling station (260) where the finished tubes are transferred to a suction plate (264) which has grooves for receiving the tubes and is rotatable to transfer the tubes to a tray (266) of the filling station (260). It would have been obvious to a skilled person in the art, at the time of the invention, to have modified the apparatus of Schmid by having provided the discharge conveyor with grooves for maintaining spacing of the finished tubes, a rotatable suction grooves for transferring the finished tube to the filling station and a tray in the filling station for receiving the finished tubes, as taught by Holoubek, in order to maintain the spacing of the finished tubes on the discharge conveyor, transfer the finished tubes from the discharge conveyor to the filling station and accept the transferred finished tubes into the filling station.

- With respect to claim 2, Schmid discloses a deflection rollers (4) that deflects the foil strip (3) by 90° from running in a vertical direction to a horizontal direction.
- With respect to claims 3-5, the phrase "may be" does not constitute a positive claim limitation, but rather a possibility or a preferred embodiment; furthermore, claims 3-5 are method claims which do not further limit the apparatus claim 1, and thus do not patentably distinguish the claim invention over the applied prior art.
- With respect to claim 6, the apparatus of Schmid modified by Holoubek includes the modified discharge conveyor that comprises stationary toothed (grooved) plate (62) and toothed (grooved) plate 64 movable relative to the stationary toothed plat (62).
- With respect to claim 7, the apparatus of Schmid modified by Holoubek include a tray (266) that comprises grooves adapted to the diameter of the finished tubes.
- With respect to claim 8, Holoubek further teaches a collecting device (262) comprising a plurality of stations for collecting a plurality of finished tube from the discharge conveyor (58); it would have been obvious to the skilled person in the art, at the time of the invention, to have included the collecting device of Holoubek in modifying the apparatus of Schmid in order to collect A plurality of finished tubes from the modified discharge conveyor.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and is cited on form PTO-892 along with the applied references.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is 571-272-4462. The examiner can normally be reached on M-F from 8:00AM to 3:00PM.
12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 27, 2008

/Louis K. Huynh/
Primary Examiner
Art Unit 3721